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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

e.Digital Corporation,	Case No. 3:12-cv-02701-DMS-WVG
Plaintiff,	STIPULATED PARTIAL JUDGMENT
v.	Assigned to the Honorable Judge Dana M. Sabraw
Philips Electronics North America Corporation,	Ctrm: 13A (Annex)
Defendant.	

**STIPULATED PARTIAL JUDGMENT
OF NON-INFRINGEMENT**

Plaintiff and Counter-Defendant e.Digital Corporation (“Plaintiff”) and Defendant and Counterclaimant Philips Electronics North America Corporation (“Philips”) (collectively, the “Parties”) by their undersigned counsel, hereby stipulate and agree, subject to the approval of the Court, to the entry of the following Stipulated Partial Judgment of Non-Infringement:

1. In this action, e.Digital has alleged that certain Philips product lines (the “Accused Products”) infringe independent claims 33 and 34, and dependent claims 2, 6 through 8, 10 through 11, 15 through 16, 18, 23 through 32 of U.S. Patent No. 5,491,774 (“the ’774 patent”) patent and independent claims 2 and 5 of

1 U.S. Patent No. 5,839,108 (“the ’108 patent”), as set forth in e.Digital’s Complaint
2 (Dkt #1) and Preliminary Infringement Contentions (“PICs”) served on June 26,
3 2013.

4 2. On August 22, 2013, the Honorable Judge Dana M. Sabraw issued an
5 order granting Philips’s motion to apply collateral estoppel with respect to certain
6 terms contained in claims 33 and 34 of the ’774 patent and claims 2 and 5 of the
7 ’108 patent (“Collateral Estoppel Order”). (Dkt #41).

8 3. The Court found that the elements of issue preclusion were met in this
9 matter, and therefore e.Digital is precluded from relitigating the construction of the
10 limitation “sole memory of the received processed sound electrical signals” as
11 contained in claims 33 and 34 of the ’774 patent and claims 2 and 5 of the ’108
12 patent. (Dkt#41). The Court further found that fairness and public policy favor
13 application of issue preclusion in this matter. (Dkt#41).

14 4. In view of the foregoing, the Parties therefore agree that Philips has
15 not infringed and does not infringe directly and/or indirectly, independent claims
16 33 and 34 of the ’774 patent, and any other claims depending therefrom. The
17 Parties further agree that Philips does not infringe directly and/or indirectly
18 independent claims 2 and 5 of the ’108 patent, and any other claims depending
19 therefrom. The Parties therefore agree that the Court may enter a non-final partial
20 judgment that Philips has not and does infringe directly and/or indirectly,
21 independent claims 33 and 34 of the ’774 patent, and any other claims depending
22 therefrom; and that Philips has not and does not infringe directly and/or indirectly,
23 independent claims 2 and 5 of the ’108 patent, and any other claims depending
24 therefrom.

25 5. It is provided, however, that if the Court’s findings as set forth in
26 Collateral Estoppel Order are reversed, changed, or modified on appeal such that
27 the matter is remanded for further consideration in any respect, the Parties reserve

1 all of their claims, arguments and defenses.

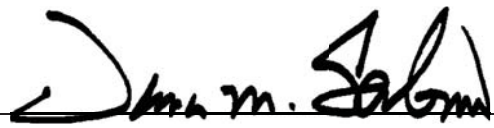
2 6. Philips hereby dismisses without prejudice its counterclaims of
3 patent invalidity and noninfringement, as well as all other counterclaims and
4 defenses, with respect to the '774 patent and the '108 patent, except as those
5 claims relate to a claim for attorneys' fees and/or costs, and further reserves the
6 right to re-assert all such counterclaims and defenses should e.Digital or any
7 successor in interest accuse Philips of infringement of the '774 and/or the '108
8 patents at any later point in time.

9 7. Accordingly, the Court enters this Stipulated Partial Judgment of Non-
10 Infringement in favor of Philips on e.Digital's claim for infringement of claims 33
11 and 34 of the '774 patent, and any other claims depending therefrom, and claims 2
12 and 5 of the '108 patent, and any other claims depending therefrom. (Dkt# 1).

13 8. This Non-Final Stipulated Partial Judgment of Non-Infringement is
14 without prejudice to the Parties' rights to appeal the Court's Collateral Estoppel
15 Order and/or any prior or future orders issued by the Court and is without prejudice
16 as to all issues relating to fee and costs under any basis, including without
17 limitation Rule 11, Rule 54(d), and § 285.

18 9. All issues relating to fees and costs are reserved pending the outcome
19 of the Parties' dispute concerning U.S. Patent Nos. 5,742,737 and 5,842,170, and
20 the deadlines for filing any and all motions seeking fees and/or costs shall be set by
21 the Court after the Parties' dispute as to the '737 and '170 patents are resolved.

22
23 Dated: October 1, 2013


UNITED STATES DISTRICT JUDGE